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OGC Has Reviewed

4 June 1954

Payroll
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MEMORANDUM FOR: Deputy Assistant Director for Personnel

SUBJECT: Applicability of Comptroller General Decision
B-118963

1. This will acknowledge receipt of your memorandum of May 10, 1954 requesting our opinion as to whether Comptroller General Decision B-118963 dated April 12, 1954 is applicable to this Agency.

2. The Comptroller General's Decision relates to an employee of the Interstate Commerce Commission who was overpaid as a result of a faulty salary adjustment consequent to a promotion. The principal holding of the Decision is that the Comptroller General's Office is without authority to waive recovery of the erroneous overpayment, even though the employee may have been without fault. You note in your memorandum to us the fact that the Comptroller General's Decision appears to rest upon an alleged violation of Section 802b of the Classification Act of 1949 and raise the question whether this Decision would apply to CIA. We assume that the basis for your inquiry is the fact that this Agency is specifically exempted from the terms of the Classification Act.

3. It is the opinion of this office that this particular Decision, based as it is upon a specific section of the Classification Act, has a direct application to CIA in view of the fact that this Agency has a stated policy (see Regulation 20-1) to adhere to the provisions of the Act insofar as possible. It is our further opinion moreover, that if the employee concerned had been from this Agency, the same result would have been reached even though not based on the Classification Act. We drew this opinion from the general proposition that each agency of the Government has a duty to recover money wrongfully or erroneously paid from the public treasury and in the course thereof is not bound or estopped by erroneous payments made by its officers, with or without jurisdiction or whether made under mistake of fact or law. It is true that in at least one case (see 28 Comp. Gen. 514) the Comptroller General has allowed a Government employee to retain salary resulting from a promotion later discovered to have been erroneous. To the best of our knowledge, however,

cases in which the employee has been allowed to retain such payments have been those in which the amount paid was correct for the grade intended and the only error was that in some way the employee was not qualified for the grade to which he was promoted. In cases of error of computation, we see no alternative but to effect a recovery of the overpayment. Such a recovery attempt may be based both upon the Comptroller General's Decision which is the subject of your inquiry and the general proposition cited above.

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Office of General Counsel

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